

MORRIS PETERSON
 Robert McCoy, No. 9121
 Email: rrm@morrislawgroup.com
 Raleigh C. Thompson, No. 11296
 Email: rct@morrislawgroup.com
 900 Bank of America Plaza
 300 South Fourth Street
 Las Vegas, Nevada 89101
 Telephone: (702) 474-9400
 Facsimile: (702) 474-9422

Attorneys for Plaintiff Federal Deposit
 Insurance Corporation, as Receiver for
 Carson River Community Bank

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FEDERAL DEPOSIT INSURANCE)	Case No.
CORPORATION, AS RECEIVER FOR)	
CARSON RIVER COMMUNITY BANK,)	
)	
Plaintiff,)	
v.)	COMPLAINT
)	
MERRILL CONSTRUCTION, INC.;)	
WILLIAM V. MERRILL; THE BILL &)	
KATHY MERRILL FAMILY TRUST,)	
)	
Defendants.)	

Plaintiff the Federal Deposit Insurance Corporation ("FDIC"), in its
 capacity as Receiver for Carson River Community Bank, complains and alleges
 against defendants as follows:

PARTIES

1. The FDIC is a corporation formed by the United States Federal
 Government pursuant to Title 12 of the United States Code.

2. At all material times, Carson River Community Bank, Inc.
 ("Carson River Community Bank") was a Nevada Corporation authorized to do
 business in Nevada.

1 3. On February 26, 2010, the Nevada Financial Institutions
2 Division closed Carson River Community Bank and the FDIC was appointed as
3 receiver for Carson River Community Bank pursuant to 12 U.S.C. § 1821.

4 4. Pursuant to 12 U.S.C. § 1821(d), the FDIC (i) is charged, among
5 other things, with the duty of winding-up the affairs of Carson River Community
6 Bank and (ii) by operation of law, succeeds to all rights, titles, powers, and
7 privileges of Carson River Community Bank. In particular, the FDIC is authorized
8 to pursue the claims set forth in this complaint pursuant to 12 U.S.C. §
9 1821(d)(2)(B)(ii).

10 5. Upon information and belief, Merrill Construction, Inc.
11 ("Merrill Construction") is a Nevada corporation that conducts business in the
12 state of Nevada.

13 6. Upon information and belief, William V. Merrill is an
14 individual residing in Douglas County, Nevada.

15 7. Upon information and belief, The Bill & Kathy Merrill Family
16 Trust ("Merrill Family Trust") is a validly existing trust in the state of Nevada.

17 8. Upon information and belief, William Merrill is the Trustee of
18 the Merrill Family Trust.

19 **JURISDICTION AND VENUE**

20 9. Federal jurisdiction exists over this proceeding pursuant to 12
21 U.S.C. § 1819(b)(2)(A) because the FDIC is a party to this lawsuit.

22 10. Venue is proper in the United States District Court for the
23 District of Nevada pursuant to 28 U.S.C. §§ 1391(b) and (c) because all defendants
24 reside in Nevada, the actions or omissions giving rise to the claims arose in
25 Nevada, and the property that is the subject of the action is situated in Nevada.

26 **GENERAL ALLEGATIONS**

27 11. Merrill Construction and Carson River Community Bank
28 entered into a Loan Participation Agreement ("Loan Agreement") dated December

1 11, 2007, whereby Merrill Construction borrowed the principal sum of
2 \$4,000,000.00 (the "Loan").

3 12. A true and correct copy of the Loan Agreement is attached as
4 Exhibit A.

5 13. In conjunction with the Loan, Merrill Construction made,
6 executed, and delivered to Carson River Community Bank a Promissory Note
7 dated December 11, 2007 (the "Note"), in the amount of \$4,000,000.00.

8 14. Under the terms of the Note, the Loan was to Mature on
9 December 10, 2009 and interest was to accrue on the unpaid principal balance at
10 the interest rate of CRCB Prime + 1% per annum.

11 15. As security for the Loan, Merrill Construction executed a Deed
12 of Trust dated December 19, 2007 ("Deed of Trust"), irrevocably granting, selling,
13 and conveying to the Trustee with power of sale for the benefit of Carson River
14 Community Bank, as Beneficiary, certain real property of Merrill Construction
15 located in Douglas County at the address commonly known as 1104, 1105, 1107,
16 1111, 1113, 1115, 1119, 1121, 1123, 1125 Country Club Drive; 1110, 1117, 1120 1121,
17 1128, 1131, 1134, 1138, 1145, 1147, 1148, 1149, 1154, 1163, 1170 San Marcos Circle,
18 Minden, Nevada 89423 (the "Property").

19 16. The Deed of Trust was recorded on December 20, 2007, with the
20 Douglas County Recorder as Document No. 0715081.

21 17. A true and correct copy of the recorded Deed of Trust is
22 attached as Exhibit B.

23 18. The Loan Agreement, the Note, the Deed of Trust, and any
24 other document executed or delivered to or for the benefit of Carson River
25 Community Bank in connection with the Loan are collectively referred to as the
26 "Loan Documents."

27 19. In conjunction with and to secure payment of the Loan, William
28 Merrill executed a Commercial Guaranty, dated December 19, 2007 (the "William

1 Merrill Guaranty"), under which he absolutely and unconditionally guaranteed
2 full and punctual payment and satisfaction of the indebtedness of Merrill
3 Construction to Carson River Community Bank, and the performance and
4 discharge of all Merrill Construction's obligations under the Note and related Loan
5 Documents.

6 20. A true and correct copy of the William Merrill Guaranty is
7 attached as Exhibit C.

8 21. In conjunction with and to secure payment of the Loan, the
9 Merrill Family Trust, through its Trustee William Merrill, executed a Commercial
10 Guaranty, dated December 19, 2007 (the "Merrill Family Trust Guaranty"), under
11 which the Merrill Family Trust absolutely and unconditionally guaranteed full and
12 punctual payment and satisfaction of the indebtedness of Merrill Construction to
13 Carson River Community Bank, and the performance and discharge of all Merrill
14 Construction's obligations under the Note and related Loan Documents.

15 22. A true and correct copy of the Merrill Family Trust Guaranty is
16 attached as Exhibit D.

17 23. William Merrill and the Merrill Family Trust are collectively
18 referred to as the "Guarantors," and the William Merrill Guaranty and the Merrill
19 Family Trust Guaranty are collectively referred to as the "Guaranties."

20 24. Pursuant to the Guaranties, the Guarantors absolutely and
21 unconditionally guaranteed Merrill Construction's repayment of the Loan as well
22 as Merrill Construction's performance under the Loan Documents.

23 25. Merrill Construction defaulted by failing to make its minimum
24 payment of \$19,296.80 due on May 20, 2009, as required by the Loan Documents.

25 26. On June 1, 2009, Carson River Community Bank sent Merrill
26 Construction a letter demanding payment (the "Demand Letter") to bring the loan
27 current by June 30, 2009.

28

27. A true and correct copy of the Demand Letter is attached as Exhibit E.

28. Despite the demand, Merrill Construction and the Guarantors failed to cure their default or otherwise bring the loan current by June 30, 2009 or any time thereafter.

29. Due to Merrill Construction's default, Carson River Community Bank commenced non-judicial foreclosure proceedings under the Deed of Trust and caused to be recorded a Notice of Trustee's Sale on October 16, 2009 as Document No. 752297 in Douglas County.

30. The Trustee sold the Property at public auction on January 14, 2010 to the highest bidder, Carson River Community Bank, for \$1,800,000.00.

31. The Trustee's Deed Upon Sale ("Trustee's Deed") was recorded with the Douglas County Recorder on January 29, 2010 as Document No. 0757940.

32. A true and correct copy of the Trustee's Deed is attached as Exhibit F.

33. As of the date of the foreclosure sale, January 14, 2010, the amount of the unpaid debt together with costs was \$3,756,000.00.

34. Following the foreclosure of the Property and the application of the bid amount of \$1,800,000.00 to the amount due under the Loan, the total amount of \$1,956,000.00 remained unpaid. Furthermore, interest, attorneys' fees, and costs continue to accrue.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

35. Carson River Community Bank and Merrill Construction are parties to the Loan Documents.

36. By operation of law, the FDIC has succeeded to all rights, titles, powers, and privileges of Carson River Community Bank, including the Loan Documents.

1 37. Carson River Community Bank and the FDIC have performed
2 their obligations under the Loan Documents or have been excused from doing so.

3 38. Merrill Construction has defaulted on its obligations under the
4 Loan Documents by, among other things, failing to make required payments
5 toward the Loan.

6 39. After the foreclosure sale, \$1,956,000.00 remained due under the
7 Loan, exclusive of attorneys' fees and costs incurred in connection with this action.

8 40. Interest continues to accrue on the Loan.

9 41. The FDIC has been required to engage the services of attorneys
10 in these proceedings as a direct and proximate result of Merrill Construction's
11 breaches and therefore, the FDIC is entitled to attorneys' fees and costs as special
12 damages and pursuant to contract.

13 **SECOND CAUSE OF ACTION**

14 **BREACH OF GUARANTY AGREEMENTS**

15 42. Carson River Community Bank and the Guarantors are parties
16 to the Guaranties which guarantee the obligations of Merrill Construction.

17 43. By operation of law, the FDIC has succeeded to all rights, titles,
18 powers, and privileges of Carson River Community Bank, including the
19 Guaranties.

20 44. The FDIC has performed its obligations under the Guaranties
21 or has been excused from doing so.

22 45. Each Guarantor has breached his/its obligations under the
23 Guaranties by failing to make full and punctual payment of the outstanding
24 balance of the Loan as agreed.

25 46. After the foreclosure sale, \$1,956,000.00 remained due under the
26 Loan, exclusive of attorneys' fees and costs incurred in connection with this action.

27 47. Interest continues to accrue on the Loan.

28

47. Merrill Construction and the Guarantors owed an implied duty to deal with Carson River Community Bank and the FDIC and perform their obligations to Carson River Community Bank and the FDIC in good faith and with fair dealing.

BREACH OF THE IMPLIED COVENANT

47. Merrill Construction and the Guarantors owed an implied duty to deal with Carson River Community Bank and the FDIC and perform their obligations to Carson River Community Bank and the FDIC in good faith and with fair dealing.

48. Merrill Construction and the Guarantors breached this implied duty.

49. After the foreclosure sale, \$1,956,000.00 remained due under the Loan, exclusive of attorneys' fees and costs incurred in connection with this action.

51. The FDIC has been required to engage the services of attorneys in proceedings as a direct and proximate result of Merrill Construction's and its subsidiaries' breaches and therefore, the FDIC is entitled to attorneys' fees and other reasonable costs and special damages and pursuant to contract.

SPECIAL DAMAGES

52. Based on Merrill Construction's and the Guarantors' actions as detailed above, the FDIC was required to initiate legal proceedings to prosecute its contractual and statutory rights, and it has incurred attorneys' fees and costs in this effort.

MORRIS PETERSON
ATTORNEYS AT LAW
100 BANK OF AMERICA PLAZA
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
702/474-9400
FAX 702/474-9422

1 54. The FDIC is therefore entitled to recover its attorneys' fees and
2 costs as special damages pursuant to Federal Rule of Civil Procedure 9(g), as well
3 as being entitled to attorneys' fees and costs pursuant to contract.

4 **FIFTH CAUSE OF ACTION**

5 **APPLICATION FOR DEFICIENCY JUDGMENT PURSUANT TO NRS 40.455**

6 55. As of the date of the foreclosure sale, January 14, 2010, the
7 amount of the unpaid debt together with costs was \$3,756,000.00.

8 56. On January 14, 2010, Carson River Community Bank completed
9 its foreclosure of the Property ultimately taking title tot he Property for
10 \$1,800,000.00.

11 57. The consideration received by Carson River Community Bank
12 for sale of the Property was applied first to accrued interest, and then to the
13 principal balance of the Loan.

14 58. The recital of consideration in the Trustee's Deed Upon Sale for
15 the Property reflects a deficiency in the proceeds of the sale and a balance reaming
16 due to Carson River Community Bank under the Loan.

17 59. After the foreclosure sale, \$1,956,000.00 remained due under the
18 Loan, exclusive of attorneys' fees and costs incurred in connection with this action.

19 60. Interest continues to accrue on the Loan.

20 61. Accordingly, Carson River Community Bank is entitled to a
21 deficiency judgment in an amount to be determined at an evidentiary hearing set
22 pursuant to NRS 40.457.

23 WHEREFORE, the FDIC prays for judgment as follows:

24 1. For an award of damages against Merrill Construction and the
25 Guarantors for breach of the Loan Documents and Guaranties in the amount of
26 \$1,956,000 plus interest, late fees, and other costs related to and due under the
27 Loan that have accrued since the foreclosure sale;

28

2. A deficiency judgment against all defendants, jointly and severally, in an amount to be determined at an evidentiary hearing set pursuant to NRS 40.457.

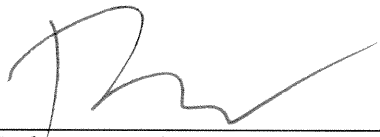
3. For reasonable costs of suit;

4. For reasonable attorneys' fees, both pursuant to contract and also as special damages;

5. For pre-judgment and post-judgment interest; and

6. For such other and further relief as the Court may deem just and proper.

MORRIS PETERSON

By 
Robert McCoy, No. 9121
Raleigh C. Thompson, No. 11296
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Plaintiff Federal Deposit Insurance Corporation, as Receiver for Carson River Community Bank